Litigation as a Means to Child Welfare Reform

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Litigation in Child Welfare

- 18 states have been sued or are in the process
- All have reached a settlement or court decree
- Last many years and require many resources
- Fairly comprehensive
- Limited data on process and outcomes
Agenda

• Overview of necessary background information
• Theoretical Foundation
• Funding
• Children’s Rights
• Evaluation
• Challenges
• Lessons Learned
• Our own research
Introductions

• Who is in the session? Your role in child welfare?
• What is your current knowledge regarding child welfare class action litigation?
Sample

- Children’s Rights Class Action lawsuits
- Suits that have reached settlement/court decree
- Must have reached settlement between 1998-2010

5 lawsuits: Georgia, New Jersey, Tennessee, Wisconsin, New Mexico
Analysis

• Descriptive, trends
Is there significant variability between states, time points & budgets? What events/players contributed to outcome?
- Variables examined include total state child welfare funding, total combined state and federal child welfare funding, total removals, ever adopted, length of stay, discharge reason, number of placements
• Data available for 5 states: Georgia, New Jersey, Tennessee, Wisconsin, New Mexico
Theory

• Punctuated Equilibrium
  - New ideas are not easily adopted, requiring a major impetus for change
  - Explains sudden and large scale changes
  - Reacts to crisis
  - Necessary due to legislators inaction/lengthy process
  - Friction
Knowledge and Action Framework

- **Social Mobilization (Litigation)**
  1) Initiated by the oppressed
     - Class action suit
  2) The oppressed struggle with those in power
     - Litigation lasts years and often have to return to court when settlement agreements are not met
  3) Critical incidents act as catalysts for the oppressed
     - Critical mass of severe inadequacies lead to litigation, ex: Utah was deficient in 10 key areas: protective services, shelter care, out of home placements, health care, mental health care, education, case planning, court processes and workforce system accountability
Funding Streams

- Each state’s budget is different and is influenced by federal mandates and funding
- Reforms are highly dependent on funding
- While child welfare funding has increased overtime, it still only accounts for less than 1% of the total federal budget
- Increases in Title IV-E (foster care and adoption), while Title IV-B (prevention/preservation) remains stagnant
Federal Funding Trends

Where are the increases?

Litigation

- Child welfare class action suits began in 1970’s.
- 18 states have been sued for comprehensive reform
- Lawsuits can take many years to close successfully
- Focus on foster care program issues rather than prevention/preservation
## Children’s Rights Class Action Law Suits

<table>
<thead>
<tr>
<th>States that have active pre-judgement lawsuits</th>
<th>Date of lawsuit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Massachusetts</td>
<td>2010</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>2007</td>
</tr>
<tr>
<td>Texas</td>
<td>2011</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>States that have active judgements being monitored</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Connecticut</td>
<td>1989</td>
</tr>
<tr>
<td>Georgia</td>
<td>2002</td>
</tr>
<tr>
<td>Michigan</td>
<td>2006</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2004</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1999</td>
</tr>
<tr>
<td>Tennessee</td>
<td>2000</td>
</tr>
<tr>
<td>Washington</td>
<td>1989</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1993</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>2008</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>States closed successfully</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Kansas</td>
<td>1977</td>
</tr>
<tr>
<td>Kentucky</td>
<td>1980</td>
</tr>
<tr>
<td>Missouri</td>
<td>2005</td>
</tr>
<tr>
<td>New Mexico</td>
<td>1980</td>
</tr>
<tr>
<td>New York City</td>
<td>1995</td>
</tr>
<tr>
<td>Philadelphia</td>
<td>1989</td>
</tr>
</tbody>
</table>
## Current Status of Settled Cases

<table>
<thead>
<tr>
<th>State</th>
<th>Litigation Date</th>
<th>Settlement Date</th>
<th>Closed Date</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Mexico</td>
<td>1980 &amp; 2002</td>
<td>1983 &amp; 2003</td>
<td>2005</td>
<td>the case was successfully closed, with both parties agreeing that New Mexico would continue to implement the improved child welfare practices</td>
</tr>
<tr>
<td>Missouri</td>
<td>1983 &amp; 1992</td>
<td>1983 &amp; 1994</td>
<td>2006</td>
<td>the court conditionally dismissed the case, court oversight officially ended, and the state agreed to keep in place until 2009 the policies, practices and staff positions created as a result of the lawsuit.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>1989</td>
<td>1991</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Kansas</td>
<td>1989</td>
<td>1993</td>
<td>2002</td>
<td>privatized in 1996 to better reach settlement agreements</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>1993</td>
<td>2002</td>
<td>N/A</td>
<td>started to try to reform in 1998-1999, still working on reaching settlement agreements</td>
</tr>
<tr>
<td>New Jersey</td>
<td>1999</td>
<td>2003</td>
<td>N/A</td>
<td>continues to work on meeting standards</td>
</tr>
<tr>
<td>Tennessee</td>
<td>2000</td>
<td>2001</td>
<td>N/A</td>
<td>improvements, but monitoring continues</td>
</tr>
<tr>
<td>Georgia</td>
<td>2002</td>
<td>2005</td>
<td>2008</td>
<td>case closed due to dramatic improvements</td>
</tr>
</tbody>
</table>
## What areas does litigation target?

<table>
<thead>
<tr>
<th>Problems</th>
<th>Related Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Foster Care Related</strong></td>
<td></td>
</tr>
<tr>
<td>Required Medical/Dental/MH Care not given</td>
<td>Health/behavioral care services improved</td>
</tr>
<tr>
<td>Adoption finalization longer than 12 mos/not finding permancy</td>
<td>Increase in finalized adoptions</td>
</tr>
<tr>
<td>Reunification parents not visited by caseworkers &amp; Reunification children not receiving visits w/parents</td>
<td>Length of time in care decreased</td>
</tr>
<tr>
<td>No adequate plan for Ind. Liv. Children</td>
<td>Track those waiting in juvenile detention for placement</td>
</tr>
<tr>
<td>Not being placed in least restrictive/appropriate setting/ Children &lt;6, 12yrs in group homes</td>
<td>Foster care services within neighborhood</td>
</tr>
<tr>
<td>abused while in care</td>
<td>increased/improved permanancy planning</td>
</tr>
<tr>
<td>multiple moves/too long in custody/ Emergency stays &gt; 30 days</td>
<td>elimination of emergency shelter</td>
</tr>
<tr>
<td>low foster care payments/not enough FC homes</td>
<td>supervision of foster homes/private providers increased</td>
</tr>
<tr>
<td>those reunified returned to foster care</td>
<td>Decreased abuse in placements</td>
</tr>
<tr>
<td>no $ for kin placements</td>
<td>fewer multiple placements</td>
</tr>
<tr>
<td>no oversight of private agencies/inadequate education</td>
<td>Increased Foster Families</td>
</tr>
<tr>
<td>not kept w/siblings</td>
<td>Minimal re-entries</td>
</tr>
<tr>
<td></td>
<td>Increased money for Kin placements</td>
</tr>
<tr>
<td></td>
<td>supervision of foster homes/private providers increased</td>
</tr>
<tr>
<td></td>
<td>Education improved</td>
</tr>
<tr>
<td></td>
<td>Siblings placed together</td>
</tr>
</tbody>
</table>
## What areas does litigation target?

<table>
<thead>
<tr>
<th>Problems</th>
<th>Related Outcomes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Child Abuse related</strong></td>
<td></td>
</tr>
<tr>
<td>Investigations not in timely manner</td>
<td>Increase # and quality of caseworkers/caseload decrease</td>
</tr>
<tr>
<td></td>
<td>Hotline improvements</td>
</tr>
<tr>
<td></td>
<td>Investigation Quality and timeliness improved</td>
</tr>
<tr>
<td>Caseworkers poorly trained/high caseloads</td>
<td>Increase # and quality of caseworkers/caseload decrease</td>
</tr>
<tr>
<td>No family preservation services</td>
<td>Implementation of family preservation programs</td>
</tr>
<tr>
<td>not removing while being abused</td>
<td>Increase # and quality of caseworkers/caseload decrease</td>
</tr>
<tr>
<td></td>
<td>Hotline improvements</td>
</tr>
<tr>
<td></td>
<td>Investigation Quality and timeliness improved</td>
</tr>
</tbody>
</table>
Children’s Rights Process

• Investigation: 1-2 years: collects publicly available evidence, identifies face of class action suit
• Partners with local law firms
• As damaging evidence is made public, the child welfare system may begin discussion that can lead to meaningful reform. However, if these talks do not initiate or result in dedicated reform efforts, the lawsuit moves forward
• Shapes settlement conditions based on experiences with other states.
Children’s Rights Process

• Once settlement has been reached, Children’s Rights forms a team that aids states in implementing reforms.

• States often experience setbacks. The advisory team serves as a resource for states to overcome these obstacles. If states are not able to overcome obstacles to reform, Children’s Rights takes additional legal steps.

• Once a state has proven that it has implemented all reforms to the court’s satisfaction, the case is closed and Children’s Rights is no longer involved.
Litigation Evaluation

- Quality Service Review (QSR) – qualitative analysis, stratified random sample of cases reviewed
- Issues
  - Some states started including quantitative data based on AFCARS and NDCAN
  - AFCARS and NDCAN data collection is flawed and do not include variables that are needed to evaluate outcomes of settlement agreements
  - Results vary from state to state, but all struggle to meet settlement agreements
  - Evaluations focus on lessons learned, rather than rigorously evaluating child and family outcomes
Wisconsin

• Sued in 1993 and has yet to meet the settlement agreement standards.
• A report by the Wisconsin Department of Health and Human Services examined electronic files for 171 cases, including 73 cases selected from those most likely to involve children at risk of abuse or neglect; all out-of-home care cases opened in January 2004 and 50 of 64 safety services cases opened in January 2004.
• Interviews were conducted with DHFS and contract staff; advocates and organizations interested in child welfare issues; child welfare providers in five Wisconsin counties and six other mid-western states; reviewed a number of studies and meeting minutes from organizations that have made recommendations for improving the child welfare system.
• The evaluation found that the number of children in the system had declined
• Numerous issues still needed to be addressed, such as timeliness in investigations and service provision, collaboration with community agencies, permanency efforts, and safety

(Wisconsin Department of Health and Family Services, 2006).
New Jersey

• Sued in 1999 and continues to struggle to meet settlement mandates.
• The state has contracted with the Center for the Study of Social Policy (CSSP) to evaluate its progress in meeting settlement requirements.
• In 2010, CSSP gathered information through telephone surveys of 142 caseworkers, 193 foster parents, site visits in local offices, family resource centers, differential response programs, and other community based providers and interviews with external stakeholders such as contracted service providers, youth, biological parents, advocacy organizations, and court personnel.
• Conducted limited case record reviews on select performance measures such as the placement of youth in shelters.

(Center for the Study of Social Policy, 2011).
New Jersey

• New Jersey has made progress and has met standards for access to:
  - health care,
  - timely investigations,
  - appropriate placements,
  - sufficient foster home inventory,
  - increased training,
  - decrease in number of children in foster care.
• It has implemented a qualitative review process.
• New Jersey continues to struggle with:
  - case planning,
  - family involvement,
  - caseworker visitation,
  - safety and risk assessment,
  - high caseloads,
  - quality of investigations,
  - implementing aging out services
Reform’s Methodological Challenges

- Inadequate performance measures
- National data collection efforts flawed
- No cause and effect, rather pre/post reform
- States implement reforms differently, therefore difficult to assess across states
- Lack of empirical evidence, conducive to program evaluations rather than experimental designs
Lessons Learned

• Increase outreach to and the involvement of key stakeholders such as child welfare administrators, case workers, and community partners in the design and monitoring of the reform process.

• Reduce acrimony between various stakeholders by providing regular opportunities for interaction and communication about reform efforts.

• Draw significantly upon policy and practice expertise in the design and monitoring of negotiated court orders and reform plans.

• Construct reform efforts broadly.

• Strike a balance between court orders that may be overly prescriptive and court orders that do not include enough interim or process measures to ensure a clear roadmap.

(Children’s Rights & National Center for Youth Law, 2007, p. 5).
Lessons Learned

• Implement organizational culture change at all levels by ensuring high quality agency leadership, valuing worker input, communicating the agency mission internally and externally, and retraining the entire workforce in the philosophy and practice model.

• Create internal and external accountability and oversight structures through accreditation, ombudsman offices, child fatality and other review boards, and fully staffed quality assurance units that conduct meaningful analysis.

• Expand data collection and analysis and utilize data to inform policy, practice, supervision and training at all levels.

• Establish research and evaluation capacity through collaborations with universities to help conduct trend analyses, evaluate programs and inform performance based contracting.

• Develop legislative allies and cultivate child welfare champions to support the federal and local policy and resources
Limitations of Litigation

• Mostly qualitative data. No longitudinal analysis. Don’t tie child outcomes to “successes”. No evaluations of family preservation.
• Inherently adversarial, thus resulting in push back and resentment from the child welfare system. This may encourage change for the sake of meeting mandates, and may not bode well for long-term change once the lawsuit has closed. Litigation has also created outcomes that are easily measured instead of creating comprehensive reform that focuses not only on outcomes, but also on process and deep institutional cultural change.
• Changes are very slow and encounter multiple obstructions to successful reform.
My own research

• We just reviewed relevant background information on litigation and child welfare.
• Take a 5-10 minute break?
• The following slides will detail my current research
Research Methods

• Meeting the research where it is at
• Case Study of 4 or 5 states: state and contractor reports/evaluations, all Children’s Rights documents, newspaper articles, key informant interviews, etc.
• Quasi-experimental time series design using relevant CFSR measures and budget data among case study states and those demographically similar.
• Come up with traits of lawsuits that appear to have impacted outcomes
• Looking for suggestions for those in the community. What information would be helpful to you?
## CSFR Measures & Original Complaint

<table>
<thead>
<tr>
<th>Related AFCARS Variable</th>
<th>Tennessee</th>
<th>Georgia</th>
<th>New Jersey</th>
<th>Wisconsin</th>
</tr>
</thead>
<tbody>
<tr>
<td>CFSR</td>
<td>Children were placed in large, orphanage-style institutions and other group settings at one of the highest rates in the nation;</td>
<td>exposed to violence, sexual assault, and other illegal activity;</td>
<td>abuse while in care</td>
<td>High rates of abuse and neglect of children while in foster care;</td>
</tr>
<tr>
<td>number of placements, length of stay</td>
<td>Children were overburdened and poorly trained, with caseloads that prevented them from adequately supervising the children in their care; and</td>
<td>Children in foster care experience high levels of abuse and neglect;</td>
<td>Inadequate and untimely investigation of abuse and neglect allegations; and</td>
<td>Frequent moves among foster homes with little caseworker oversight;</td>
</tr>
<tr>
<td></td>
<td>Children were routinely placed in emergency shelters and other temporary holding facilities for more than six months at a time, because the state had no other foster care placements for them;</td>
<td>Children languish for months in dangerous emergency shelters</td>
<td>Failure to move children quickly into permanent homes, causing children to languish unnecessarily in state custody.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Children were bounced from one inappropriate foster placement to another, based not on their needs but rather on the existence of 'slots'.</td>
<td>Children are routinely shuffled from foster home to foster home, spending many years in state custody; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Related AFCARS Variable</td>
<td>Well being</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>variables- find annual reports that include CSFR measures</td>
<td>Children in foster care receive inadequate health care and educational services.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>number of placements, length of stay</td>
<td>Children in foster care are denied adequate legal representation in the Juvenile Courts due to high caseloads of attorneys assigned to represent children.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Well being</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Questions to Answer

- Restrictive Settlement Agreement?
- Experience of CPS leadership
- Political leadership
- Level of resistance
- Willingness to change even before settlement
- Meeting settlement expectations quickly to avoid going back to court
- Amount of T&TA to implement settlement agreements
- Severity of initial issues sued for
- Amount/length of funding increase
- Initial motion matches settlement terms
- What legislation resulted from litigation?
- What strategies/actions were used to address settlement agreement terms (ex: new deadlines, protocols, trainings, work groups, tools, etc.)
- Child outcomes improved related to initial issues identified (quantitative)
Budget Data

- Child Trends
- Detailed state level budget data only available 1996-2006
- 2008 data will be available soon
- Local, state, federal
- Breakdown of title IV-E, title IV-B, SSBG, TANF, Medicaid, SSI, other
- Local funding is often not accurate
Total State Child Welfare Budget

Georgia

- Total State Child Welfare Budget
- $0
- $100,000,000
- $200,000,000
- $300,000,000
- $400,000,000
- $500,000,000
- $600,000,000
- $700,000,000
- $800,000,000
- $900,000,000

- 1996
- 1998
- 2000
- 2002
- 2004
- 2006
Total State Child Welfare Budget

New Jersey

- $0
- $100,000,000
- $200,000,000
- $300,000,000
- $400,000,000
- $500,000,000
- $600,000,000
- $700,000,000
- $800,000,000

Total State Child Welfare Budget

Tennessee


Budget: $0, $100,000,000, $200,000,000, $300,000,000, $400,000,000, $500,000,000, $600,000,000

Graph showing the increase in the total state child welfare budget for Tennessee from 1996 to 2006.
Total State Child Welfare Budget

![Graph showing the total state child welfare budget for Wisconsin from 1996 to 2006.

The budget starts at $0 in 1996 and increases to $50,000,000 by 1998. It then rises to $100,000,000 in 2000, peaks at $350,000,000 in 2002, and decreases to $100,000,000 in 2004. By 2006, the budget rises to $300,000,000.]

Wisconsin
Total State Child Welfare Budget

New Mexico

- 1996: $30,000,000
- 1998: $35,000,000
- 2000: $40,000,000
- 2002: $50,000,000
- 2004: $60,000,000
- 2006: $40,000,000
State Budget Trends

• General increase in budget just prior and just after settlements.
• Not enough data to see what happens to budgets after the case closes.

(waiting on more current 2008 budget data from Georgia to determine if budget decreased after case closing)
Trends

- Used to show trends in 3 main variables being analyzed:
  - Number of Placements
  - Number of Removals
  - Discharge Reason
Georgia - Number of Placements
Georgia - Number of Removals

Number of Removals

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimated Marginal Means</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>1.125</td>
</tr>
<tr>
<td>2000</td>
<td>1.150</td>
</tr>
<tr>
<td>2001</td>
<td>1.160</td>
</tr>
<tr>
<td>2002</td>
<td>1.170</td>
</tr>
<tr>
<td>2003</td>
<td>1.185</td>
</tr>
<tr>
<td>2004</td>
<td>1.190</td>
</tr>
<tr>
<td>2005</td>
<td>1.195</td>
</tr>
<tr>
<td>2006</td>
<td>1.190</td>
</tr>
<tr>
<td>2007</td>
<td>1.200</td>
</tr>
<tr>
<td>2008</td>
<td>1.210</td>
</tr>
<tr>
<td>2009</td>
<td>1.220</td>
</tr>
<tr>
<td>2010</td>
<td>1.225</td>
</tr>
</tbody>
</table>
Georgia- Discharge Reason

- Discharged through Adoption or Guardianship
Georgia Discharge Reason

- Discharged due to kin placement or parent reunification
Georgia - Discharge Reason

- Discharged due to transfer, runaway, or death
Overall Impression of Georgia

- These child outcome measures did not improve over time, and actually became worse (though not dramatically) on nearly all measures.
New Jersey- Number of Placements
New Jersey - Number of Removals
New Jersey: Discharge Reason

- Discharged through Adoption or Guardianship
New Jersey - Discharge Reason

- Discharged due to kin placement or parent reunification
New Jersey: Discharge Reason

- Discharged due to transfer, runaway, or death
Overall Impression of New Jersey

- Varied outcomes: Some better, some much worse
Tennessee- Number of Placements

Number of Placements

Estimated Marginal Means

Tennessee

Year:
- 1999
- 2000
- 2001
- 2002
- 2003
- 2004
- 2005
- 2006
- 2007
- 2008
- 2009
- 2010

Values:
- 2.00
- 2.20
- 2.40
- 2.60
- 2.80
- 3.00
- 3.20
- 3.40
Tennessee - Number of Removals
Tennessee - Discharge Reason

- Discharged due to kin placement or parent reunification
Tennessee - Discharge Reason

- Discharged through Adoption or Guardianship
Tennessee - Discharge Reason

- Discharged due to transfer, runaway, or death
Overall Impression of Tennessee

• Some remained the same or slightly improved, while others worsened.
Wisconsin - Number of Placements

Number of Placements

Estimated Marginal Means

Wisconsin
Wisconsin - Number of Removals
Wisconsin- Discharge Reason

- Discharged due to kin placement or parent reunification
Wisconsin - Discharge Reason

- Discharged through Adoption or Guardianship
Wisconsin - Discharge Reason

- Discharged due to transfer, runaway, or death
Overall Impression of Wisconsin

- Varied and erratic changes.
Policy Recommendations

Focus on long-term solutions such as:
• Prevention/Preservation: Initial infusion of funds, and then a slow shift from Title IV-E to Title IV-B
• Increase independent research funding
• Increase evaluations with better measures

• Ideas?
Future Research

- Litigation’s relationship with Privatization

<table>
<thead>
<tr>
<th>States that have privatized</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>No Lawsuit</strong></td>
</tr>
<tr>
<td>North Carolina</td>
</tr>
<tr>
<td>Florida</td>
</tr>
<tr>
<td>Ohio</td>
</tr>
<tr>
<td>Maine</td>
</tr>
<tr>
<td>Illinois</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Lawsuit</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington</td>
</tr>
<tr>
<td>Texas</td>
</tr>
<tr>
<td>Kansas</td>
</tr>
<tr>
<td>Missouri</td>
</tr>
<tr>
<td>Michigan</td>
</tr>
<tr>
<td>Tennessee</td>
</tr>
</tbody>
</table>
Thank you!

• Tiffany Ryan, MSW
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